

**Draft for Public Hearing
Amendments to 310 CMR 7.28**

Amend the following definition in 310 CMR 7.28(2):

from

New Budget Unit means for the purpose of allocation under 310 CMR 7.28(6), a budget unit which has commenced operation after the 1998 control period, but which has not received an allocation under 310 CMR 7.28 from the Department for the current year's control period or any preceding year's control period.

to

New Budget Unit means, for the purpose of allocation under 310 CMR 7.28(6), a budget unit which has commenced operation after the 1998 control period, but which has not received an allocation under 310 CMR 7.28 from the Department for the current year's control period.

Following definitions to be inserted at 310 CMR 7.28(2):

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Energy Efficiency Project or EEP means the installation or implementation of one or more of the following measures at a facility located in Massachusetts:

(a) the voluntary design, acquisition, and installation of projects that directly result in energy savings, or

(b) the voluntary modification of maintenance and operating procedures in a building or facility that directly result in energy savings, or

(c) the voluntary installation, replacement, or modification of equipment, fixtures, or materials in a building or facility that directly result in energy savings, and include, but are not limited to, modifications to windows and doors; caulking and weather-stripping; insulation; automatic energy control systems; refrigeration equipment; hot water systems; equipment required to operate steam, hydraulic, and ventilation systems; plant and distribution system modifications including replacement of burners, furnaces or boilers; devices for modifying fuel openings; electrical or mechanical furnace ignition stems; utility plant system conversions; replacement or modification of lighting fixtures; energy recovery systems; and Energy Conservation Measures and Energy Conservation Programs, as defined in the Division of Energy Resource's regulations, 225 CMR 2.02 and 225 CMR 4.02, each as in effect on March 1, 2003.

(d) EEPs do not include reductions in labor, load shifting, or measures that do not directly result in energy savings.

Privately Funded Energy Efficiency Savings means the energy savings that result from the installation and implementation of EEPs that are privately funded.

Ratepayer Funded Energy Efficiency Savings means the energy savings that result from the installation and implementation of EEPs pursuant to Massachusetts General Laws Chapter 25, Section 19.

Renewable Energy means electric energy generated by one or more of the following fuels, energy resources and/or technologies, and that does not emit NO_x: solar photovoltaic or solar thermal energy;

wind energy; fuel cells that do not employ a fuel processor that emits NO_x; ocean thermal, wave or tidal energy; hydro and geothermal energy. Electric energy generated from nuclear fuel, biomass, landfill gas, fuel cells that employ a fuel processor that emits NO_x, or hydro using pumped storage is not eligible under 310 CMR 7.28 as renewable energy.

Renewable Energy Project or REP means one or more generation units producing renewable energy, located in Massachusetts or directly connected to pool transmission facilities located in Massachusetts.

Representative means a party who aggregates one or more REPs and/or EEPs, on behalf of project proponents, to equal at least one whole allowance. Representative may include, but is not limited to, a common owner of projects, an energy service company, an emission trading broker or state agency.

Amend 310 CMR 7.28(6)(b) by deleting 310 CMR 7.28(6)(b)1 through 310 CMR 7.28(6)(b)4 and replacing them with the following;

(b) Public Benefit Set-Aside

1. Beginning in 2003, the Department will annually allocate 5% of the Massachusetts NO_x state trading program budget to a public benefit set-aside account to provide for allocation of allowances for Energy Efficiency Projects (EEPs) and Renewable Energy Projects, (REPs).
2. In any calendar year, if the Department approves more allowances for EEPs and REPs than are available in the public benefit set-aside account, then an additional 2% of allowances from the new unit set-aside account may be transferred to the public benefit set-aside account in order to make additional public benefit set-aside allowances available. The Department will allocate allowances to the new budget units as requested under 310 CMR 7.28(6)(a)1 before it transfers any surplus new budget unit allowances to the public benefit set-aside account.
3. In any calendar year, if the Department approves more allowances than are available in the public benefit set-aside account in that calendar year, including those surplus new unit set-aside allowances transferred pursuant to 310 CMR 7.28(6)(b)2, then allowances will be allocated to all projects pro rata.
4. Allowances allocated to the public benefit set-aside account that are unused will be banked in the public benefit set-aside account. As of May 1st of each year, if the number of banked allowances in the public benefit set-aside account is 10% or greater of the total Massachusetts NO_x state trading program budget, any banked allowances in excess of 5% of the Massachusetts NO_x state trading program budget will be allocated to existing budget units pro rata based on net control period electrical, and useful steam output for that calendar year.

Amend 310 CMR 7.28(6)(b) by adding the following sections:

5. Beginning in 2003, and each year thereafter, a Representative, or person who owns, leases, operates or controls an REP may request public benefit set-aside allowances based on the amount of energy generated by the project during the preceding control period. The Department will only allocate allowances for REPs that commenced operation after December 31, 1999. The Department will not allocate allowances for renewable energy generated prior to 2002.

6. Beginning in 2003 and each year thereafter, a Representative, or person who owns, leases operates or controls a facility where an EEP is installed or implemented may request allowances based on the amount of energy saved during the preceding control period. The Department will only allocate allowances for EEPs installed or implemented after December 31, 1999. The Department will not allocate allowances for energy saved prior to 2002. For EEPs, DEP may allocate allowances each year for up to a maximum of seven consecutive years immediately following the year of installation or implementation of the EEP.
7. Aggregated Projects:
 - a. The Department will not allocate allowances for REPs or EEPs that individually result in less than one whole allowance. A Representative may aggregate two or more REPs and/or EEPs that individually result in less than one allowance, to equal at a minimum, one whole allowance. The Representative shall submit one request for public benefit set-aside allowances to the Department pursuant to 310 CMR 7.28(6)(b)8 and establish one account pursuant to 310 CMR 7.28(8)(b) or (c).
 - b. A Representative, or person who owns, leases, operates or controls EEPs and/or REPs at different facilities may aggregate the projects when requesting allowances.
8. In 2003, requests for public benefit set-aside allowances must be submitted to the Department by August 1st. Beginning in 2004 and each year thereafter, requests for public benefit set-aside allowances must be submitted to the Department by July 1st. Each request shall include the following information:
 - a. Renewable Energy Project(s):
 - i. The name of the person who owns, leases, operates or controls the project(s);
 - ii. The address of the project(s);
 - iii. A list of the generation unit(s) included in the project(s);
 - iv. A quantification of the total amount in MWh of net electric energy generated from the project(s) in the preceding year control period, or, if monthly data is not available, then the total amount of energy generated from the project(s) during the preceding calendar year multiplied by five-twelfths. The quantification shall be based on the metered net electric output as obtained using metering equipment meeting the accuracy requirements found in NEPOOL's Operating Procedure 18 "Metering and Telemetering Criteria" or successor, or other metering equipment acceptable to the Department;
 - v. The account identification number established pursuant to 310 CMR 7.28(8)(b) or (c);
 - vi. The name of the Authorized Account Representative (AAR) as defined in 310 CMR 7.28(2);
 - vii. The signature of a responsible official, as defined in 310 CMR 7.00, attesting to the following:

I certify that I personally examined the foregoing information and am familiar with the information contained in this document and all the attachments and that, based on my inquiry of those persons immediately responsible for obtaining the information, I believe that the information contained in this request, including

- the quantification of the total amount of energy generated from the project, is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment. I am fully authorized to make this attestation on behalf of the project proponent; and
- viii. Any other information requested by the Department.

b. Energy Efficiency Project(s):

- i. The name and address of the facility where the EEP is implemented;
- ii. A description of the energy efficiency measures included in the EEP;
- iii. The date of completion of the EEP;
- iv. A quantification of the total amount in MWh of net electric energy saved by implementing the EEP in the preceding year control period, or, if monthly data is not available, then the total amount of energy saved by the EEP during the preceding calendar year multiplied by five-twelfths. For Rate Payer Funded Energy Efficiency Savings, the quantification shall be based on the Department of Telecommunications and Energy's verification using the Final Guidelines for Energy Efficiency Projects prescribed by the Department of Telecommunications and Energy; D.T.E. 98-100. For Privately Funded Energy Efficiency Savings, the quantification shall be based on either the Final Guidelines for Energy Efficiency Projects prescribed by the Department of Telecommunications and Energy; D.T.E. 98-100; or the International Performance Measurement and Verification Protocol; March 2002; DOE/GO-102002-1554;
- v. The account identification number established pursuant to 310 CMR 7.28(8)(b) or (c);
- vi. The name of the Authorized Account Representative, (AAR) as defined in 310 CMR 7.28(2);
- vii. The signature of a responsible official, as defined in 310 CMR 7.00, attesting to the following:

I certify that I personally examined the foregoing information and am familiar with the information contained in this document and all the attachments and that, based on my inquiry of those persons immediately responsible for obtaining the information, I believe that the information contained in this request, including the quantification of the total amount of energy saved from the project, is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment. I am fully authorized to make this attestation on behalf of the project proponent; and
- viii. Any other information requested by the Department.

c. Aggregated Projects

- i. The names of the Representative and of the person(s) who owns, leases, operates or controls the aggregated projects;
- ii. Documentation deemed satisfactory by the Department that the Representative has actual authority to represent each party in the aggregation for the purpose of this section;
- iii. The names and addresses of the individual REPs and/or EEPs;

- iv. A quantification of the total amount in MWh of net electric energy generated or saved from the aggregated project in the preceding control period, or, if monthly data is not available, then the total amount of energy generated or saved from the projects during the preceding calendar year multiplied by five-twelfths. For REPs, the quantification shall be based on the metered net electric output as obtained using metering equipment meeting the accuracy requirements found in NEPOOL's Operating Procedure 18 "Metering and Telemetering Criteria" or successor, or other metering equipment acceptable to the Department. For Ratepayer Energy Efficiency Savings, the quantification shall be based on the Department of Telecommunications and Energy's verification using the Final Guidelines for Energy Efficiency Projects prescribed by the Department of Telecommunications and Energy; D.T.E. 98-100. For Privately Funded Energy Efficiency Savings, the quantification shall be based on either the Final Guidelines for Energy Efficiency Projects prescribed by the Department of Telecommunications and Energy; D.T.E. 98-100, or the International Performance Measurement and Verification Protocol, March 2002, DOE/GO-102002-1554;
 - v. The account identification number established pursuant to 310 CMR 7.28(8)(b) or (c);
 - vi. The name of the Authorized Account Representative, (AAR) as defined in 310 CMR 7.28(2);
 - vii. The signature of a responsible official attesting to the following:
I certify that I personally examined the foregoing information and am familiar with the information contained in this document and all the attachments and that, based on my inquiry of those persons immediately responsible for obtaining the information, I believe that the information contained in this request, including the quantification of the total amount of energy generated and/or saved from the aggregated projects, is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment. I am fully authorized to make this attestation on behalf of the project proponent; and
 - viii. Any other information requested by the Department.
9. The Department will accept only one request per project. If the Department receives more than one request per project, it will return all the requests for that project and have the parties decide who will resubmit the request.
10. Upon receipt of a request the Department will review the information submitted pursuant to 310 CMR 7.28(6)(b)8. By October 15th of each year, the Department will provide the requester with a preliminary determination of the number of allowances that will be allocated to each project based upon the application of the following formula to the information submitted:

$$\text{Allowances} = (\text{MWh}) * (1.5 \text{ lbs/MWh}) / (2000 \text{ lbs/ton})$$

Where MWh = Amount of actual net electric energy generated in mega watt hours (MWh) by the REP or the actual net electrical energy saved in mega watt hours (MWh) by the EEP as quantified in the allowance request submitted under 310 CMR 7.28(6)(b)8.

All allowances are allocated, transferred, or used as whole allowances. To determine the number of whole allowances, the number of allowances is rounded down for decimals less than 0.5 and rounded up for decimals of 0.5 or greater. Allowances that equal less than 1.0 may not rounded up to 1.0.

11. By November 15th of each year, the Department will allocate current year allowances from the public benefit set-aside account to the compliance or overdraft account established under 310 CMR 7.28(8)(b) or the general account established under 310 CMR 7.28(8)(c) according to the formula in 310 CMR 7.28(10) as adjusted if necessary, according to the provisions of 310 CMR 7.28(6)(b)1 through 7.28(6)(b)13.
12. Persons requesting allowances from the public benefit set-aside account are not required to apply for Emission Control Plans or Operating Permits solely on account of said request.
13. Allowances from the public benefit set-aside account may be banked in accordance with 310 CMR 7.28(9), or transferred in accordance with 310 CMR 7.28(10).

Amend 310 CMR 7.28(7)(d)(2)(b) to read as follows:

Notify the Department of the change, provide an explanation of the change and submit an electronic copy of the revised detailed monitoring plan within two weeks after the next quarterly submittal deadline.

Amend 310 CMR 7.28(11)(a)2. to read as follows:

Any person who owns, leases, operates or controls a new budget unit which commences operation on or after January 1, 2002, shall install, operate and successfully complete all applicable certification testing requirements for monitoring heat input, NO_x emission rate and NO_x mass emissions pursuant to the requirements of 40 CFR Part 75 Subpart H by the later of the following dates: May 1, 2002; or, the earlier of 90 unit operating days, or 180 calendar days after the date the unit commences commercial operation.

Amend 310 CMR 7.28(13)(b) to read as follows:

The Authorized Account Representative, (AAR), for each budget unit using CEMS shall submit to the Administrator all emissions and operating information for each calendar quarter of each year in accordance with the standards specified in 40 CFR Part 75 Subpart H and 40 CFR 75.64. For budget units not using CEMS, reports shall be submitted only for the control period portion of the second and third quarters of each calendar year.

Amend the first sentence of 310 CMR 7.28(13)(e) to read as follows:

By October 30 of each year, any person who owns, leases, operates or controls a new or existing budget unit shall report to the Department each facility's metered net electrical and useful steam output for that year's control period.